SUPREME COURT OF THE UNITED STATES.

No. 278.

JOHN W. HINSON, PLAINTIFF IN ERROR.

vs.

ELISHA B. LOTT, TAX COLLECTOR OF THE COUNTY OF MOBILE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ALABAMA.

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a To the Hon. the Judges of the Supreme Court of Alabama:

The petition of John W. Hinson, a citizen of Alabama, respectfully shows to your honors, that heretofore he filed his bill of complaint in the Court of Chancery for the first district of the southern chancery division of the State of Alabama, at Mobile, against Elisha B. Lott, who is the tax collector of Mobile County, and prayed among other things, that said Lott should be perpetually enjoined and restrained from collecting of your petitioner a certain tax of fifty cents per gallon upon liquors imported by him into the State of Alabama, from countries foreign to the United States, and from other States of the United States, and which petitioner held in the original packages of importation unbroken—which tax the said Lott claimed authority to collect under the provisions of an act of the general assembly of the State of Alabama, approved 22d February, A. D. 1866, entitled "An act to establish revenue laws of the State of Alabama," and such proceedings were thereon had, that said Court of Chancery rendered a decree against your orator and dismissed his said bill of complaint.

Your petitioner further shows, that he thereupon removed said cause by appeal to the Supreme Court of Alabama, and such proceedings were thereon had, that said decree of the Court of Chancery was reversed, so far as relates to the alleged importations from foreign countries, and affirmed as to said importations from other States of the United States, and said cause was remanded to the said Court of Chancery, that further proceedings might be had therein in conformity to the said opinion of said Supreme Court.

Your petitioner further shows, that thereupon said Court of Chancery, at its January term, 1867, proceeded and rendered its decree and dismissed the bill of your orator, so far as the same referred to, and sought to restrain the collection of said tax upon liquors imported into the State of Alabama from other States of the United States by your petitioner, notwithstanding said liquors were in his hands in the original packages, unbroken, and as the same had been imported into the State of Alabama from other States of the United States.

Your petitioner further shows, that he appealed from the said Court of Chancery to the Supreme Court of Alabama, and such proceedings were thereon had, that said decree of said Court of Chancery was by the judgment of said Supreme Court of Alabama, at the term of first Monday of June, 1867, in all things affirmed; that said Supreme Court of Alabama is the highest court of law or equity of said State of Alabama, in which a decision could be had in said suit; and that in said suit, was drawn in question the validity of the authority claimed to be exercised by said Lott, under the said act of the general assembly of the State of Alabama, on the ground of their being repugnant to the Constitution of the United States, article I, section VIII, paragraph 3, and the laws of the United States in pursuance thereof, and article I, section X, paragraph 2, and the decision of said Supreme Court was in favor of such, their validity, whereby

has arisen a case provided for by the 23 section of the act of Congress, approved Sept. 24, 1789, entitled "An act to establish the judicial courts of the United States;" whereupon your petitioner prays he may be allowed his writ of error to the Supreme Court of the United States, returnable to the next term thereof, and as in duty bound, &c.

JNO. W. HINSON, *Pet'r.*
By D. C. ANDERSON,
P. HAMILTON, *Att'ys.*

June 14, 1867.

b, UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the Honorable the Judges of the Supreme Court of the State of Alabama, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of Alabama before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between John W. Hinson, complainant, and Elisha B. Lott, defendant, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption, especially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said John W. Hinson, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and sixty-six.

[SEAL.] LAWRENCE WORRALL,
Clerk of the Circuit Court of the United States, for the Fifth Circuit and Southern District of Alabama

[50 ct. int. rev. stamp]

Allowed June 17th 1867, by A. J. WALKER,
Chief Justice of the Supreme Court of Alabama.

Endorsed; John W. Hinson *vs.* Elisha B. Lott. Writ of Error. Filed June 17th, 1867.

JNO. D. PHELAN, *Clerk.*

c The United States of America to Elisha B. Lott, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the State of Alabama, wherein John W. Hinson is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the said judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable A. J. Walker, Chief Justice of the Supreme Court of the State of Alabama, this 17th day of June, in the year of our Lord one thousand eight hundred and sixty-seven.

A. J. WALKER,
Chief Justice Supreme Court of Alabama.

On this 26th day of June, in the year of our Lord one thousand eight hundred and sixty-seven, personally appeared Henry T. Gaines, before me, the subscriber, the said Gaines being a deputy sheriff of the county of Mobile, State of Alabama, and makes oath that he delivered a true copy of the within citation to Elisha B. Lott, the party to whom the within citation is addressed.

HENRY T. GAINES.

Sworn to and subscribed the 26th day of June, A. D. 1867.

W. W. D. TURNER,
U. S. Commissioner for the Southern Dist. of Alabama.

Rec'd 26th June, 1867, and on the same day I served a copy of the within citation in error on Elisha B. Lott.

M. D. GRINNELL,
Sheriff Mobile County.
By HENRY T. GAINES, *D. S.*

Endorsed: John W. Hinson *vs.* Elisha B. Lott, Citation in error. Filed June 17th, 1867.

JNO D. PHELAN, *Clerk, &c.*

d [Copy.]

Know all men by these presents: That we, John W. Hinson, Alfred R. Murray, and E. A. Holt, are held and firmly bound unto Elisha B. Lott, in the full and just sum of five hundred dollars to be paid to the said Elisha B. Lott, his certain attorney, executors, administrators, or

assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this 17th day of June, in the year of our Lord one thousand eight hundred and sixty-seven.

Whereas, lately at a term of the Supreme Court of Alabama, begun and held on the first Monday of June, 1867, in a suit depending in said court, between the said John W. Hinson, appellant, and Elisha B. Lott, appellee, on appeal from the Court of Chancery at Mobile, for the first district of the southern chancery division of the State of Alabama, was rendered against the said John W. Hinson, affirming the decree of said Court of Chancery, and for the costs, and the said John W. Hinson having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Elisha B. Lott, citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington, the first Monday of December next.

Now, the condition of the above obligation is such, that if the said John W. Hinson shall prosecute said writ of error to effect, and answer all damages and costs if he fail to made his said plea good, then the above obligation to be void, else to remain in full force and virtue.

(Signed) J. W. HINSON. [SEAL.]
ALFRED R. MURRAY. [SEAL.]
E. A. HOLT. [SEAL.]

Sealed and delivered in the presence of—
(Signed) D. C. ANDERSON.

June 17, 1867.
Approved by
(Signed) A. J. WALKER,
Chief Justice Supreme Court of Alabama.

I, John D. Phelan, clerk of the Supreme Court of Alabama, hereby certify that the foregoing, on pages 1 and 2, is a true, perfect, and complete copy of the original writ of error bond, and approval of same, filed in my office on the 17th day of June, 1867, in a cause, wherein John W. Hinson is plaintiff in error, and Elisha B. Lott is defendant; which said bond is now on file in my office.

Witness: JNO. D. PHELAN, *Clerk.*

Endorsed: Sup. Ct. U. S., No. 278. Copy. John W. Hinson *vs.* Elisha B. Lott. Writ of error bond. Filed 17th June, 1867.
JNO. D. PHELAN,
Clerk Sup. Co. of Al'a.

Filed 4th Dec., 1867.

Caption of Sup. Court.

Be it remembered that at a term of the Supreme Court of the State of Alabama, begun and held at the capitol in the city of Montgomery, on Monday, the third day of June, in the year one thousand eight hundred and sixty-seven, (A. D. 1867,) there were present and presiding as judges of said court, Hon. Abram J. Walker, Chief Justice; Hon. Wm. M. Boyd, Associate Justice; Hon. Thomas J. Judge, Associate Justice, before whom the following proceedings were had, to wit:

There was filed in the office of the clerk of said Supreme Court, on the 4th day of June, 1867, the following transcript of the record and proceedings in the case of John W. Hinson, (plaintiff) *vs.* E. B. Lott, (defendant,) from the Chancery Court of Mobile County, in said State, in the words and figures following, to wit:

A transcript of the record and proceedings had in a cause pending in the Court of Chancery for the first district of the southern chancery division of the State of Alabama, wherein John W. Hinson is complainant, and Elisha B. Lott, tax collector of Mobile county, in said State, is defendant:

Bill.

In Chancery, at Mobile.

To the Honorable N. W. COCKE, *Chancellor of the Southern Chancery Division of the State of Alabama:*

Your orator, John W. Hinson, of the city and county of
2 Mobile, and State of Alabama, humbly shows unto your honor, that before and at the time of the exhibition of this bill of complaint he was and is a merchant in said city, engaged, among other things, as a wholesale dealer in spirituous liquors, importing the same both from foreign countries and certain States of the Union.

Your orator further shows, that during the present month of March, on consignment from Dexter, of the State of Ohio, he received five barrels of whisky to be sold on account of said Dexter, in the State of Alabama; also, at the same time, he introduced into the city of Mobile, for sale, five other barrels of whiskey, which he purchased in the State of Louisiana, and from citizens from said State Louisiana; he further shows, that during said month he imported from a foreign country one barrel of brandy and one barrel of rum, upon which he paid the import duties required by the acts of the Congress of the United States in such cases, at the custom-house at Mobile.

And he now holds all of said spirituous above named in the same packages in which they were imported and received by him, and in that condition has offered and now offers them for sale; and he also claims the right to sell said liquors, so introduced by him into the State, in smaller quantities than by the barrel, and also offers to sell in smaller quantities his said liquors.

Your orator further shows, that since the reception of said spiritu-

ous liquors, one E. B. Lott, as the State and county tax collector for the county of Mobile, has given your orator notice that he requires him to pay taxes on said liquors, at the rate of fifty cents per gallon, for the State of Alabama; also, of twenty-five cents per gallon, for the county of Mobile; also, of forty per cent. on the State tax, as a school tax for said county; also, of five cents per gallon, as a tax for roads in said county—said tax to be on each and every gallon of spirituous liquors so introduced by your orator from the day of , to the present time; and the said tax collector has forbidden your orator to offer his said liquors until said taxes are fully paid, and threatens, in case your orator refuses to pay said tax and to render to him,
3 the said tax collector, a statement under oath of all spirituous liquors so introduced in the State by him for sale, that he will proceed to levy upon and take into his possession such spirituous liquors or other property of your orator, and that he will require the payment of an additional 50 per cent. on the State tax as a penalty for such refusal.

He further shows, that said E. B. Lott claims, as authority for such actings and doings, an act of the legislature of the State of Alabama, approved Feb'ry 22d, 1866, entitled An act to establish revenue laws of the State of Alabama, and especially the 13th, 14th, and 15th sections of chapter 1 of said act.

4. But your orator shows, that he is advised and believes that said act, in the section herein referred to, is in conflict with the Constitution of the United States, which, in the 8th section of the 1st article thereof, declares that no State "shall, without the consent of Congress, lay any imports or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws."

And also with that clause which declares that "Congress shall have power to regulate commerce with foreign nations and with the several States, and with the Indian tribes."

And he therefore charges that said act is not binding on him, and the proceedings of the tax collector are illegal and oppressive.

He further says, that spirituous liquors are now, and have been from the foundation of the government, an article of traffic and commerce between the States of this Union and with foreign countries; that if said tax collector be not restrained by law from such oppressive proceedings, the business of your orator in such traffic will be broken up, and he will suffer irreparable injury.

4 5. Inasmuch as he is without adequate remedy at law, your orator prays that said E. B. Lott be made a party defendant to this bill; that he and his agents be perpetually injoined from collecting the taxes referred to from your orator, and from all other proceedings for that purpose, and for such other and further relief as to your honor may seem meet.

D. C. ANDERSON,
Sol. for Comp't.

Filed May 2d, 1866.

JNO. M. TAYLOR, *Register.*

Agreement of counsel.

In the matter of the foregoing bill, for the sake of speedy adjudication, it is agreed that no objection shall be taken to the presentation of the question by bill in chancery, but that the defendant may interpose a demurrer, assigning such special grounds as shall raise the question of the constitutionality of the acts of the legislature under which defendant, Lott, is proceeding as tax collector, and the complainant raises no question as to the regularity of the proceedings of the tax collector.

The case may be heard and decided by the chancellor in vacation at his early convenience, without notice of the application to him, and an appeal may at once be taken from the chancellor's decision to the Supreme Court.

Mobile, March 31st, 1866.

D. C. ANDERSON,
Sol. for Compl't.
SMITH & HERNDON,
Sol's for Defendant.

5 Filed May 2d, 1866.

JNO. M. TAYLOR,
Register.

Decree in vacation.

At chambers, in vacation, May 25th, 1866, the following decree was rendered by the Honorable N. W. Cocke, chancellor of the southern chancery division of the State of Alabama, to wit:

In Mobile Chancery Court.

JOHN W. HINSON
vs.
E. B. LOTT, Tax Collector.

This cause comes on to be heard in vacation, by consent of the parties, on the bill of complaint and the written agreement of said parties on file, and has been argued in writing by the respective solicitors; and now, on consideration, it is ordered, adjudged, and decreed that the said bill be dismissed, and that the complainant pay the costs of the suit, for which execution may issue against him.

N. W. COCKE,
Chancellor So. Div.

Tuskegee, May 25th, 1866.

Decree final.

At a term of the Court of Chancery, for the first district of the southern chancery division of the State of Alabama, begun and holden on the fourth Monday in January, A. D. 1867, the Honorable N. W. Cocke, chancellor, presiding, and on the 5th day of February, A. D.

1867, being a day of said term, it was decreed as follows, in this cause, to wit:

JOHN W. HINSON
vs.
E. B. LOTT, Tax Collector of Mobile County.

This cause comes on to be heard upon the bill and demurrer thereto; the agreement of counsel on file in the cause, and the
6 opinion of the Supreme Court, heretofore rendered on appeal in this cause, in consideration whereof, it is ordered, adjudged, and decreed that the bill be granted as to so much of the demand for taxes made upon complainant, as relates to goods imported into this State from countries foreign to the United States, and which are held by complainant for sale, or have been sold by complainant in the original packages of importation; and as to so much of the amount of taxes demanded of him upon the goods described, for county purposes; as to these amounts, a perpetual injunction is awarded to the complainant, upon the defendant forbidding and restraining the collection from complainant of all said taxes.

As to the remainder of the matters upon which relief is sought, that is, as to all sums of money demanded of complainant as described in said bill of complaint, by said defendant, as tax collector aforesaid, for taxes claimed by and due to the State of Alabama, upon liquors, goods, imported into the State of Alabama, from other States of the United States, whether the same be held, or have been sold by complainant in original packages of importation, or in smaller packages, and also in liquors and goods imported from foreign countries, and which have not been kept or sold by complainant, unbroken in the vessel or packages in which they were imported, in the hands of said complainant, it is ordered, adjudged, and decreed, that said bill of complaint be dismissed, and the complainant is ordered to pay the costs of this suit.

Order granting appeal.

At rules, Register's office, 23d day of May, 1867, being a rule day of said court, the following order was made in the cause, to wit:

JOHN W. HINSON
vs.
E. B. LOTT, Tax Collector, &c.

7 In this cause the complainant prays an appeal, returnable to the June term, A. D. 1867, of the Supreme Court of the State, from the decree rendered at the January term, A. D. 1867, of this court:

It is therefore ordered, that such an appeal be allowed upon bond, in the sum of two hundred dollars being given, with sufficient sureties, to be approved by the register, payable to defendants, and conditioned for the prosecution to effect of said appeal, and to abide

and perform such decree as the Supreme Court may render in the premises:

Appeal bond.

STATE OF ALABAMA, *Mobile County:*

Know all men by these presents, that we, Alfred A. Murray and Bernard Moog, of the city of Mobile, are held and fimly bound unto Elisha B. Lott, his heirs, executors, and administrators, in the sum of two hundred and fifty dollars, for the payment we jointly and severally bind ourselves, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this 23d day of May, 1867.

The condition of the above obligation is such, that whereas, John W. Hinson has this day applied for and obtained an appeal, returnable to the June term, A. D. 1867, of the Supreme Court of Alabama, to supersede and reverse a decree recovered by said Elisha B. Lott, against the said John W. Hinson, at the January term, A. D. 1867, of the Court of Chancery for the first district of the southern chancery division of said State, at Mobile, dismissing complainant's bill with costs:

Now, if the said John W. Hinson shall prosecute the said appeal to effect, and satisfy such decree as the Supreme Court may
8 render in the premises, then this obligation to be null and void, otherwise to be and remain in full force and effect.

ALFRED R. MURRAY.
BERNARD MOOG.

Approved 23d May, A. D 1867.

JNO. M. TAYLOR, *Register.*

Citation.

Court of Chancery, for the first district of the southern chancery division of said State, at Mobile.

THE STATE OF ALABAMA:

To the Sheriff of Mobile County, greeting:

Whereas, at a term of the Court of Chancery aforesaid, held on the 4th Monday of January, 1867, in a certain cause in said court, wherein John W. Hinson is complainant, and Elisha B. Lott, defendant, a decree was rendered against said complainant, to reverse which, he, the said complainant, has this day applied for and obtained from this office, an appeal returnable to the next term of our Supreme Court of the State of Alabama, to be held at Montgomery, on the first Monday of June next, and the necessary bond having been given by Alfred R. Murray and Bernard Moog, sureties therein:

Now, you are hereby commanded, without delay, to cite the said E. B. Lott, or Smith & Herndon, his solicitors, to appear at the next term of our said court, to defend against said appeal, if they think proper.

Witness, John M. Taylor, Register of the said Court of Chancery, this 23d day of May. 1867.

Attest: JNO. M. TAYLOR,
Reg. 1st Dist. So. Ch'y Div. at Mobile.

9 *Sheriff's Return.*

Rec'd 23d May, 1867, and on the same day I served a copy of the within citation on E. B. Lott.

(Signed) M. D. GRINNELL, *Sheriff, M. C.*
By HENRY T. GAINS, *D. S.*

THE STATE OF ALABAMA, *Mobile County:*

I, John M. Taylor, register in chancery for the first district of the southern chancery division of said State, hereby certify that the foregoing six pages contain a full and complete transcript of the record and proceedings had in said court, in a certain cause therein pending, wherein John W. Hinson is complainant, and Elisha B. Lott, tax collector of the county, is defendant, as the same remains of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court of Chancery, this first day of June, A. D. 1867.

(Signed) JNO. M. TAYLOR, [SEAL.]
Register.

[One dollar State stamp, cancl'd.]

Upon the body of this transcript is endorsed the following:
Filed June 4th, 1867.

PHELAN, *Clerk.*

A copy of the assignment of errors.

Supreme Court of Alabama.

JOHN W. HINSON, appellant,
vs.
ELISHA B. LOTT, appellee. } June Term, 1867.

And now comes the appellant and makes the following assignment of error, to wit:

1. The decree of the chancellor dismissing the bill.
2. The chancellor should have decreed in favor of comp'lt, according to the prayer of his bill.

D. C. ANDERSON,
P. HAMILTON,
For Appellant.

Supreme Court of Alabama.

THURSDAY, *June 6th*, 1867.

JOHN W. HINSON
vs.
ELISHA B. LOTT. } 1 Div. 3,330.

Came the parties by their attorneys, and this cause is submitted for a decision

Copy of the opinion of the Court in this case delivered by A. J. Walker, C. J.

Section 13, of the revenue law, adopted at the late session of the

legislature, requires the payment of a tax of fifty cents per gallon upon liquor introduced into this State by dealers in the same. It is settled in the license cases, 5 How., 594, that a State has no right to tax goods imported from a foreign country, while they remain in the hands of the importer, in the form and shape in which they were brought into the country; but when the original package, barrel or cask is broken up for use or retail by the importer, or has been disposed of by him, it may become a subject of State taxation. The tax prescribed in the act of the legislature, therefore, can not be imposed upon liquors in the hands of the importer from foreign countries, remaining in the barrels or casks of importation, and the court should have enjoined the levy of the tax upon such liquors so remaining. The importer has a right to sell free from State
11 interference in the original casks or barrels, and to that extent and no further, should be protected. As to liquors introduced from other States the question is materially different. We do not understand that the the Supreme Court of the United States has held the power of Congress to regulate commerce with foreign nations, among the several States and with the Indian tribes, to be exclusive. Certainly opinions to that effect are to be found in its reports, and such was the opinion of Judge Story. Chief Justice Taney, with great emphasis, both in the license and passenger cases, reported in 5th and 7th Howard, expresses the oposite opinion. In the license cases the point was expressly adjudicated by the holdings of the court. That a law of New Hampshire was constitutional, notwithstanding a man had been indicted and convicted under it for a misdemeanor, because he had brought a barrel of American gin from Boston and sold it in New Hampshire. The court, Chief Justice Taney being its organ, said.

"The mere grant of power to the general government can not, upon any just principles of construction be construed to be an absolute prohibition to the exercise of any power over the same subject by the State." It is conceded that it is difficult to decide from the many and various opinions of the judges of the Supreme Court of the United States, in the many cases upon the subject, what its position upon this point is, Gibbons *vs.* Ogden, 9 Wheaton, 419; License Cases, supra; Passenger Cases, 7 Howard, 283; Cooley *vs.* Board of Wardens, 42 Howard, 299; City of N. Y. *vs.* Miln, 11 Pet., 102. But the question of what is the position of the Supreme Court of the United States, has been a matter of careful inquiry in this court. In the Commissioners of Pilotage *vs.* Steamboat Cuba *et al*, 28 Ala., 185, it was held that the grant of the power to Congress, in reference to commerce did not involve a prohibition to the State to legislate upon the same subject. The judgment in that case was reversed by the Supreme of the United States, in 1859, on another point,
12 and with a very clearly implied recognition and approval of the position of this court upon this question. Smoot *vs.* Davenport, 22 Howard, 227. The supreme judicial tribunal of the United States very clearly recognizes the doctrine that State regulations upon the subject of commerce are not void because they

infringe the Constitution, but are void only when "they interfere with or are contrary to the laws of Congress, made in pursuance of the constitutional power to regulate commerce. The invalidity of State legislation upon the subject, is put expressly upon the ground that an act of Congress, passed in pursuance of the Constitution must, under the second section of the 6th article of that instrument, be the supreme law of the land; and that therefore a law of the State, "though enacted in the excercise of powers not contraverted, must yield to it." We thus have a recognition as late as 1859, of the doctrine, that there is no constitutional prohibition to the States to legislate on the subject of commerce, and that that power is only denied to a State, when there is an act of Congress with which it interferes; and this too in a case from this court. In 1859, the case of Dorman *vs.* The State, 34 Ala., 216, was decided, Mr. Justice R. W. Walker delivering the opinion. In that case, in one of the most carefully considered and able opinions ever delivered from this bench, and after one of the ablest arguments ever heard in this court room, the question of the concurrence of the State authority to regulate commerce was passed upon. The court said "The power to regulate commerce with foreign nations is not so exclusive in Congress as to prevent all State legislation upon the subject. It belongs to the class of concurrent powers, and every such power may be exercised by the State, subject to the single limitation
that in the event of actual collision the law of Congress pre-
13 vails, and the State law ceases to operate. It does not appear
that in the application of this act to the defendant, any collision has taken place with the laws of Congress. He has, therefore, no right to call upon us to correct its execution." There may be some matters connected with the subject of Congress of such a nature as that the power of Congress to legislate in reference to them must necessarily be exclusive. (Cooley *vs.* Board of Wardens, supra.) But we have no such subject in this case.

Without further remarks upon the subject we express the opinion that the power of the State to legislate on the subject of commerce is, as a general rule, concurrent with that of Congress, and must only yield when it comes in conflict with an act of Congress, and it is settled in this court that such is the law, and such is the ascertainment of the law by the Supreme Court of the United States.

There being no prohibition upon the State to legislate upon the subject of the commerce of other States with it, it may so legislate, with the qualification that it cannot enter upon the ground occupied by Congress. There is no act of Congress with which a State tax upon liquor, introduced from other States can interfere, and therefore it is permissible for the State to impose a tax upon the sale of liquor introduced from another State. Such a tax is not only constitutional but it is obviously just and proper, for a tax to the same extent is imposed upon liquor manufactured in the State.

It is admitted that the law under consideration is broad enough to apply to liquors imported from foreign countries, but it is void only so far as it is in collision with the acts of Congress on that subject.

By the 73 section of the revenue law, county assessments, not exceeding 50 per cent. upon the State tax, are authorized to
14 be made upon the assessment books, on the first Monday of September, by the court of county commissioners. The tax on liquor offered for sale does not go on the assessment books, and there is no power in the court of county commissioners to assess a county tax upon the State tax on liquor introduced into the State.

It is contended that the tax is unconstitutional, because it is a tax upon imports. The word import in the Constitution of the United States refers only to articles introduced from [from] foreign countries. Opinion of Mr. Justice McLean, License Cases, supra, 594; opinion of Mr. Justice Catron, 601, Bouvier's Law Dic. Importation; Barrett *vs.* S. & D. R. Co., 2 Man. and Gr. 155, note.

We have been referred to the case of Almy *vs.* State of California, 24 How., 169. This case was in reference to a law of California requiring a stamp to be put upon a bill of lading for transportation from any point within to any point without the State. The Supreme Court of the United States, in the case above cited, held that this law was unconstitutional in its requisition that a bill of lading, for some gold to be transported to New York should be stamped. The unconstitutionality of the law was put upon the ground that it was a tax upon an export. It is now contended before us, on the authority of this case, that an article carried from one State to another is exported from one and imported into the other, and that therefore the words import and export are used in reference to the transfer of an article from one State into another. The argument built upon this decision would be good, if it appeared that the gold was destined for no place besides New York. The statement of the facts of the case is very meagre, and found only in the opinion of the court.
15 From that statement it can not be ascertained that the gold was not shipped to New York in transitu for some foreign port. From some expressions in the argument of the court, we infer that such was the case. We are not convinced that it was intended to hold that the character of an "import" or "export" could be stamped upon an article by its transfer from one State to another, and we are not disposed to regard it as an authority to that effect. We are referred to some State decisions, which are supposed to militate against the views expressed by us; if they do, we are not willing to follow them.

The chancellor should have dismissed the bill as to the tax upon liquor introduced from other States, and as to liquor imported from a foreign country, and not kept unbroken in the vessel in which it was imported in the hands of the importer, and should have retained it as to imported liquor in the hands of the importer, and in the unbroken bulk in which it was imported, and also as to the tax for county purposes.

Reversed and remanded.

Opinion upon application for rehearing, delivered by A. J. Walker, C. J.

We deem it necessary to respond to a part of the argument made in support of the application for a rehearing in this case. Our original opinion does not admit that the case of Almy *vs.* the State of California, 24 Howard, 169, necessarily involved the assertion that the carrying of articles from one State to another made them exports; or that the bringing them into one State from another made them
16 imports, within the meaning of the second paragraph of the 10th section of the first article of the Constitution. We then thought that the meager facts in the opinion did not exclude the idea, that the gold mentioned in the opinion was shipped from San Francisco to New York, in transitu to some foreign port. The counsel of the appellant accompany their application for a rehearing with a transcript of the record, and an examination of it convinces us that the gold was shipped to New York as the termination of the voyage, and that the question whether the carrying of an article from one State to another constituted it an "export," was involved in the case. Notwithstanding the question was involved in the case, it was passed over without notice in the opinion, and it would seem as if the point had not been called to the attention of the court. The phraseology of the opinion indicates that the diversity between the facts in that case, and in those of Brown *vs.* the State of Maryland, was not observed, and that the case was regarded in the same light as if the shipment had been made to a foreign port; and this explanation is rendered more plausible by the fact that the counsel on neither side of the case appear to have noticed this diversity of facts in their arguments. It must be conceded, however, that the failure to notice the difference in the facts might have resulted from a conviction that it was immaterial. We cannot, however, avoid feeling some doubt whether the court intended to stamp every transfer of property from one State to another with the character of an exportation, and every introduction of property into one State from another with the character of an importation.

We entertain a thorough conviction that the clause of the Constitution referred to above, does not prohibit the taxing, by a State, of the sale of articles brought into it from another State. This conviction is based upon the belief that the terms "imports and exports"
17 in that clause, refer alone to things introduced from foreign countries, and sent out to foreign countries. The question was directly presented in the case of Pierce *et al. vs.* the State of New Hampshire, (one of the license cases,) 5 Howard. The law of New Hampshire made the sale of liquor without license, an indictable offense. Under that law the defendants were indicted and convicted for the sale, without license, of a barrel of American gin, purchased in Massachusetts, and brought coast-wise into New Hampshire, and there sold in the same barrel and in the same condition in which it was purchased. The court instructed the jury, that the "statute, as it (regarded) that case, was not repugnant to the clause in the Consti-

tution of the United States, providing that no State shall, without the consent of Congress, lay any duty on imports or exports, because the gin in this case was not a foreign article, and was not imported into, but had been manufactured in the United States. Chief Justice Taney, in the concluding paragraph of his opinion, clearly determines the point. He says: "Upon the whole, * the law of New Hampshire is, in my judgment, a valid one. For, although the gin sold was an import from another State, and Congress have the power to regulate such importations, under the grant to regulate commerce among the several States, yet, as Congress has made no regulation upon the subject, the traffic in the article may be lawfully regulated by the State as soon as it is landed in its territory, and a tax imposed upon it, or a license required, or the sale altogether prohibited, according to the policy which the State may suppose to be its interest or duty to pursue." Thus we have the declaration of Chief Justice Taney, who wrote the opinion in Almy *vs.* the State of California, that the State of New Hampshire had the power to tax a barrel of gin brought into that State from Massachusetts, and
18 sold in the form of its introduction. In the same case Judge McLean, (p. 594,) and Judge Catron, (p. 611,) and Judge Daniel, (p. 614,) and Judge Woodbury, (p. 623,) very clearly indicate the opinion, that "imports and exports," as mentioned in the 10th section of the first article of the Constitution, refer alone to the introduction and sending off of articles in foreign commerce.

In the case of the State *vs.* Pinckney, 10 So. Car. Law R. (Richardson) 474, it was held that the articles brought in from other States and sold in the form and bulk in which they were so brought, were not imports within the meaning of the provision of the Constitution of the United States, and that a statute taxing them was valid. A decision identical in principle with that of the State *vs.* Pinckney, was made in Georgia, in Cumming *vs.* Savannah, R M. Charlton, 26. To the same effect was the decision in Mississippi, (Judge Sharkey delivering the opinion,) Harrison *vs.* the M. & C. of Vicksburg. 3 Sm. & M. 581. In the State of Michigan (Beall *vs.* State, 4 Blackf. 107) there is a decision which supports the same principle. The remark made by Ch. J. Marshall, in Brown *vs.* Maryland, 12 Wheaton, applying the principles of that case to importations from another State was a mere obiter dictum, and was not treated as authority in the license cases. Judge McLean, (p. 594,) says of it: "Whilst the remark can not fail to be considered with the greatest respect, coming as it does from a most learned and eminent chief justice, yet it can not be received as authority. It must have been made with less consideration, than the other points ruled in that important case."

Section IX of the first article of the Constitution, relates to the migration or importation of persons. The word "importation," here obviously and by universal consent, relates to the introduction of persons from abroad, and no reason can be perceived why the word importation, in that section, should receive an interpretation variant from that which is sought to be put upon the word
19 "import" in the next section. It seems a fair deduction,

that "import," in the Constitution, was used in reference to the geographical area within which it prevails, and was designed to characterize articles brought into that area from without. Consistently with this idea, we find that the power to regulate commerce was not left to a general phraseology, but by express words is extended to commerce with foreign nations, and among the States and with the Indian tribes.

The power of taxing chattels brought in from the sister States of the Union in the form, in which they were brought in, has often been exercised in this State, and it is not known that it has ever been denied. It has certainly been exercised in reference to slaves and dry goods brought into the State.

When we seriously doubt whether a law is unconstitutional, after we have applied the legitimate tests, we must rule in favor of its validity. We of course recognise our obligation to follow the decisions of the Supreme Court of the United States. But conceding that the case of Almy *vs.* California is in point an examination of it, fails to show that the question was considered, and we deem it inconsistent with the opinions of the judges in the license cases, and with the decisions of the State Courts. It is also at war with the undisputed practice of this State, and with our own convictions. In the passenger cases Ch. Justice Taney expressed his consent that thenceforward it should be regarded as the law of the court; that its opinion upon the construction of the constitution should always be open to discussion, and its judicial authority should depend on the force of the reasoning in support of it. If the Supreme Court of the United States did intend, in Almy *vs.* California, to give to the word "import" in the Constitution a meaning broad enough to affect the trade between the States, it will not be disrespectful for us to rest upon our own reasoning, the decisions in other States and the opinions in the license cases, and afford an opportunity by deciding in favor of the State law, for a revision of the question. At least we cannot say that we are clear in the opinion that the law is unconstitutional, or that the Supreme Court of the United States will so decide, and we must sustain it.

We remark in conclusion that Congress has not regulated either the quantities or bulks in which articles from other States may be introduced, as it has done with reference to articles brought from abroad. If it be held that articles coming from other States cannot be taxed in the original form, our laws regulating the traffic in liquors will be susceptible of evasion, so easily as to make them of little practical value.

The petition for a rehearing is overruled.

A. J. WALKER, *C. J.*

The foregoing opinions were delivered when this case was before in this court. They are as appropriate on the present as on the former appeal. On the authority of those opinions the decree of the chancellor is affirmed.

Supreme Court of Alabama.

THURSDAY, *June 6th*, 1867.

JOHN W. HINSON
vs.
ELISHA B. LOTT. } 1 div. 3,330.

Came the parties, by their attorneys, and the record, and the matters assigned for error therein being argued and examined. It appears that the appellee, Lott, is collector for State and County taxes for the county of Mobile, and as such collector of taxes asserts authority, under the act of the General Assembly of the State of Alabama, entitled "An act to establish revenue laws for the State of Alabama," approved 22d February, 1866, to collect of the appellant
21 a tax of fifty cents per gallon, upon five barrels of whiskey, imported by said appellant into the State of Alabama, from the State of Louisiana; and also five other barrels of whiskey, imported into Alabama from the State of Ohio, and which appellants hold in the same packages in which they were imported, and received by him in Alabama, from the States of Louisiana and Ohio, from the citizens of said States, before said appellant shall offer the same for sale in the State of Alabama; and said appellant insists that said authority so alleged by said appellee, and said statute of the State of Alabama are repugnant to the Constitution of the United States. Article one, section 8, paragraph 2; and article one, section 10, paragraph 3, and the laws of the United States in pursuance thereof; and that the decree of the court below is in favor of the validity of said authority so claimed by said appellee, and of said statute of the State of Alabama. Upon consideration whereof, and the argument of counsel, it seems to the court that in the record and proceedings of said Chancery Court there is no error.

It is therefore considered by the court that said decree of said Chancery Court be in all things affirmed, and that said appellee recover of said appellant and of Alfred R. Murray and Bernard Moog, sureties, the costs of this court and of said Chancery Court.

The State of Alabama.—Supreme Court.

I, John D. Phelan, clerk of the Supreme Court of the State of Alabama, do hereby certify that the foregoing twenty-one pages contain a true, full and complete transcript of the record and pro-
22 ceedings in a cause pending in said Supreme Court, wherein John W. Hinson is appellant, and Elisha B. Lott, tax collector of the county of Mobile in said State, is appellee, as the same remains of record in my office.

In testimony whereof I have hereto set my hand and affixed the seal of said Supreme Court this 1st day of October, A. D. 1867.

[SEAL.] JNO. D. PHELAN, *Clerk*.

[$2 state stamp.]

Supreme Court of the United States.

JOHN W. HINSON,
VS.
E. B. LOTT,
Tax Collector of the County of Mobile.

WOODRUFF & PARKER,
VS.
JOHN PARHAM,
Tax Collector of the City of Mobile.

IN ERROR TO THE SUPREME COURT OF ALABAMA.

Supreme Court of the United States.

JOHN W. HINSON,
VS.
E. B. LOTT,
Tax Collector of the County of Mobile.

—

WOODRUFF & PARKER,
VS.
JOHN PARHAM,
Tax Collector of the City of Mobile.

IN ERROR TO THE SUPREME COURT OF ALABAMA.

These cases present the same question for the consideration of this Court.

The only difference is, that in the former, the tax is claimed for the treasury of the State, and is directed to be collected of the dealer, before he offers for sale. In the latter, the tax is for the city treasury, and is collected under a municipal ordinance of the city, claimed to be passed in pursuance of its charter, and is upon the amount of gross sales by the dealer.

The particular facts may be thus stated:

John W. Hinson is a merchant engaged in business in the city of Mobile, and, in the course of his business, im-

ported into Alabama, at the place of his business, from the State of Louisiana, and from the State of Ohio, certain liquors in barrels.

He proposed to sell those liquors in the original packages, unbroken, in the same condition in which they were imported and received by him.

E. B. Lott is the regularly commissioned Collector for the county of Mobile and State of Alabama, of all taxes authorized by the laws of Alabama to be assessed and collected in that county, whether for the State or county treasury.

The General Assembly of the State of Alabama, by act entitled, "An act to establish revenue laws for the State of Alabama," approved February 22, 1866, among other things, enacted as follows:

"CHAP. I, SEC. 13. That before it shall be lawful for "any dealer or dealers in spirituous liquors to offer any "such liquors for sale within the limits of this State, *such* "*dealer or dealers introducing any such liquors into the State* "*for sale* shall first pay the Tax Collector of the county "into which such liquors are introduced, a tax of fifty "cents per gallon on each and every gallon thereof." Providing against the collection of more than one tax, and for the exemption from taxation of alcohol for medicinal purposes.

Section 14 makes it the duty of the person introducing such liquors into the State for sale, to make, under oath, to the Collector, full returns of the amount so introduced, and to pay the taxes in section 13 directed, "*before offering the* "*same for sale.*" And provides for failure so to do a penalty of fifty per cent. additional tax.

Section 15 makes it the duty of the Collector to ascertain the amounts of liquor so introduced, and to make search, and require information on oath.

Under the authority of this act, the Collector was proceeding to enforce the above tax of fifty cents per gallon,

(or about twenty-one dollars per barrel,) upon the said liquors imported from Louisiana and Ohio into Alabama, when Mr. Hinson appealed to the Chancellor of the State, by bill, for protection against what he believed to be an illegal as well as oppressive exaction.

The case went through the Courts of the State of Alabama, and finally resulted in a decree by the Supreme Court of the State dismissing Mr. Hinson's bill, as to the tax demanded upon the liquors imported into Alabama from other States, so far as the tax for the treasury of the State was concerned, which is the tax asserted in the quotation above made from the act of February, 1866.

Messrs. Woodruff & Parker are dealers in liquors, dry goods, and tobacco, by the wholesale. They sell only in the original package, in the form and manner in which those articles are received by them from abroad; that is, from places without the limits of the State of Alabama. In the course of their business for the year 1865–'6, the plaintiffs sold goods, in the manner and form above stated, to the amount of $300,000. This was the amount of the sales made by them of goods in the original and unbroken packages, in the same condition in which they had been received in Alabama from other States of the Union by these plaintiffs, either on their own importation or on consignment from correspondent merchants doing business in those other States.

The corporate authorities of Mobile, by ordinance, directed a collection of taxes on these gross sales at the rate of fifty cents on the hundred dollars, amounting to $1500. The plaintiffs refused to pay the tax, and the City Tax Collector, acting under the authority of the ordinance, levied on and sold property of the plaintiffs to realize the tax. Woodruff & Parker have brought their action against the Tax Collector to recover damages for such seizure and sale, on the theory that said tax is illegal, and repugnant to the Constitution of the United States.

This matter has in like manner gone through the Courts of Alabama, and the Supreme Court of the State has affirmed the validity of the ordinance of the city, and the law of the State on which it rests, and maintained the authority thereunder claimed and exercised by the Collector of the city of Mobile.

The validity of these statutes of the State, and the authority exercised under them, which was so drawn in question by these respective plaintiffs, were thus sustained by that Court, and its decision rendered in favor of the validity of the statutes. The propriety of that decision is the sole question now presented to this Court.

The ground upon which these statutes, and the authority claimed thereunder, were drawn in question, is their repugnance to the Constitution of the United States, in the particulars expressed in Article I, Section 8, paragraph 3; and Article I, Section 10, paragraph 3; and the laws of the United States in pursuance thereof.

These Constitutional declarations are:

"Congress shall have power to regulate commerce among "the several States;" and—

"No State shall levy any imposts or duties on imports "or exports."

No consent of Congress to this State legislation is pretended, and no power of inspection is asserted in this State legislation; consequently, these conditions may be entirely dismissed from view in this discussion.

The simple question is presented, of the power of the State to create the legal duty asserted in this law upon the plaintiff, and attempted to be enforced by its officer.

The case is simply this: Is the importer of goods and produce from another State, liable to pay a tax to the State into which they are imported, upon the articles so imported?

All questions with regard to the goods so imported having become mixed with the bulk and great mass of property in the State, are excluded by the conditions of

the case. The goods still remained in the hands of the original importer—or the proceeds of their sale are identified; and so remained in their original form and package—or the direct proceeds thereof—as put up in the other State, and as received in the taxing State, unbroken, and in all respects unaltered.

The operation of the statute which is objected to, is upon the article in that form. In the one case, before the dealer can do anything with the article towards the result had in view in the introduction—that is, the sale—"such dealer "introducing liquor into the State shall first pay a tax of "fifty cents per gallon each and every gallon thereof." In the other, the tax, though subsequent, is upon the identical proceeds of the goods—is upon their value, as ascertained by actual sale. The tax in each case is, then, simply and plainly a duty upon the imported article itself—that is, a *duty upon an import.* That this is so, is in fact the admission of the Supreme Court of Alabama in the Hinson case; for it so decides upon so much of the case as was originally presented, which related to an article which was held by the complainant in precisely the same manner, and for precisely the same purpose, but had come from a foreign country.

The simple question, then, is: Can a State tax imports into it from other States of the Union?

This question, in its simple form, has been answered by Chief-Justice Marshall, in the opinion he delivered for the Court in Brown *vs.* State of Maryland—12 Wheaton R., 449. The question there for decision, was the propriety of a license tax imposed by the State upon the merchant, as a pre-requisite or condition of the right or liberty to sell the imported article. After discussing the general principles involved in the Constitutional prohibition upon the State to levy imposts or duties on imports or exports, and deciding that this tax, though indirect in form, was in fact a duty on imports, and therefore illegal, remarks: "It may

"be proper to add, that we suppose the principles laid "down in this case apply equally to importations from a sister State."

It is true, the remark of the Chief-Justice was not directly upon the point in judgment, but it was upon a matter of almost identical character; and when regard is had to the history of the times immediately preceding the establishment of the Constitution, and to the causes which led to its formation—the conflicting commercial claims of the several States, and the evils thereby produced, calling for the establishment of uniform laws, and the creation of a national legislation which should be uniform, the land throughout—the force of the remark falling from that eminent Judge, and announced as the conclusion of the Court, carries with it the weight of judicial authority.

That opinion, so announced, has more recently, and since the conflicting views of the passenger and license cases, been emphatically declared the judgment of the Court.

The State of California, for purposes of revenue, by an act, directed a stamp tax to be imposed on bills of lading for the transportation, from any point or place in that State to any point or place without the State, of gold or silver in any form. The Master of a ship then lying in that State refused to pay for the stamp required by this legislation to be placed on a bill of lading, signed by him, for the transportation from California to New York of some gold placed on his vessel, and was indicted for this violation of the law.

The question there was: Is this stamp tax, so required to be paid by State authority, an impost or duty on an export, within the meaning of the Constitutional prohibition upon the State? It was held, by a unanimous Bench, that the tax fell within the terms of the prohibition.

As in this case, so in that, the transportation was between States: it was from the State of California to the State of New York.

The transaction had no relation to commerce with any

foreign nation. It was between two States: they alone were concerned.

The transaction was an export from one State to another State. It was, nevertheless, held to be *a case of export;* and, therefore, protected against any interference or regulation by mere State authority. If that be so, imports and exports being placed by the terms of the fundamental law upon a footing of perfect equality, as to State imposition, the import in this case is equally protected with the export in that, and the State law is equally void.

Upon the authority of these two cases, Brown *vs.* State of Maryland—12 Wheat. R., 419—and Almy *vs.* State of California—24 How. R., 169—it would seem the argument is exhausted. The one is the complement of the other: the two cover the whole ground of import and export into and from a State. They establish the rule, that no matter in what form, whether by license or by stamp-duty, or by any other device, a tax may be sought to be imposed by the authority of the State upon commerce not wholly internal, the attempt is illegal, and against the theory of national sovereignty and national control, which is established over the whole field of affairs external to a State; and that this rule applies whether the portion external to the State which seeks to tax is connected with, or internal to a sister State, or concerns the business of a purely foreign nation. In either event, the power to tax that commerce does not exist: it belongs alone to the General Government, to which alone is confided the regulation of all those affairs which are not purely internal, and within the State.

2. And this would seem to result from the language used in the Constitution in the grant of power to regulate commerce. The grant to Congress is universal: "To "regulate commerce, with foreign nations, among the "States, and with Indian tribes."—9 Wheat. R., 193–4.

The prohibition upon the States is correlative. They may not coin money, or make anything but gold and silver

coin a tender; they may not make any law to impair the obligation of a contract; they may not lay imposts or duties on imports or exports; they may not lay any duty of tonnage; and may not make any agreement with themselves, or with foreign powers.

The incidental powers in relation to bankruptcy, post offices, post roads, piracies, useful inventions, and kindred matters, are all confided to the General Government.

These grants to the one, and prohibition on the other, seem clearly to indicate where the whole power of regulation over matters purely external to a State, or common to all, was intended to be placed.

After some uncertainty, this Court has lately announced conclusions, which appear to be definite and plain, and to cover the whole point now in discussion.—6 Wallace R., 31; ibid., 35.

The question here is not of pilotage, of quarantine, of police regulation, or of any power which partakes of the character of either. On the part of the State, it is an attempt to tax an article brought into it from another State, for purpose of sale: it is, so far as commerce is concerned, a burthen upon the article of import, because it is a subject of commerce, and is used in commerce: it is, therefore, in its operation, a regulation of commerce; and, it is, in its form and effect, so far as the State can make it, universal — having a uniform operation over the whole country; for it operates, so far as the city tax is concerned, on all articles of import; and, so far as the State is concerned, on all liquors coming from all the States.

This legislation falls within the definitions and limitations announced in Crandall *vs.* State of Nevada.—6 Wall. R., 35, 42, 43; Corley *vs.* Board of Wardens, 12 How. R., 299.

The case, too, falls within the scope of the dissenting opinions in the former case, and within the letter of the decision in Steamship Company *vs.* Portwardens—6 Wall. R., 31 It falls particularly within the scope of the reason-

ing of the Court in the Crandall case, in the application it makes of the national principle which governs all transactions of the citizen, looking to his rights and protection as a citizen of the United States.

The case, too, falls within the influence of the opinion of the Court in Hays *vs.* Steamship Company.—17 How. R., 596.

In all these cases, the right of the citizen of a State to protection, in his property and privileges, as a subject of the National Government, against injurious legislation by a State Government, is emphatically declared; and this, whether the burthen is imposed in the shape of a tax upon property or occupation, or a regulation upon his right of action.—Gibbons *vs.* Ogden, 9 Wheat. R., 186, 209; Sinnott *vs.* Davenport, 23 How. R., 229, 238.

The power existing in Congress to regulate, and its abstaining from legislation on the subject, is as expressive an enactment as the most positive declaration could be. It is a declaration that the commerce between the States shall be free.—9 Wheat. R., 212; 7 How. R., 464.

The essence of the question here involved is presented by the inquiry: *Would it be competent to Louisiana or Alabama to require, before sale, a tax on each bale of Cotton that might be received from Mississippi; or to demand a tax upon the gross proceeds, after sale?*

New York is the great exporting port of the country, and receives, for sale and exportation, cotton, rice, tobacco, flour, liquors, etc., the product of other States. *Is it competent to New York to demand a tax* upon each and all these articles, in the hands of the merchants receiving them, for sale, in their original form, from the States of their growth and production? Or to demand a tax upon the gross proceeds of their sale, after the sale has been made? It is believed the statement of the question furnishes its own answer.

This is the simple question before the Court; and the

authority of such cases as State *vs.* Pinckney, 10 Rich. R., 474; Cumming *vs.* Savannah, Charl., 26; Harrison *vs.* Mayer, 3 S. & W., 581; Padelford *vs.* Fay, Geo. R., in affirmance of the right, it is submitted, furnish but feeble support, against the luminous opinions of the great lights of this Court.

The right of the citizen of each State to frequent the ports of the other States, with his person and property, is a right of National origin and protection, and subject alone to National regulation. It is submitted that no State regulation, for whatever purpose established, can in the smallest degree impair that right. All such State legislation, in the presence of this higher right, inhering in the citizen, and springing from the National organization, falls idle and powerless.

P. Hamilton
of Counsel
for Plff in error.

Supreme Court of the U. S.

DECEMBER TERM, 1868.

JOHN W. HINSON,

vs.

E. B. LOTT, *Collector of Taxes.*

WOODRUFF & PARKER,

vs.

JOHN PARHAM, *Collector of Taxes.*

Supreme Court of the U. S.

DECEMBER TERM, 1868.

JOHN W. HINSON,

VS.

E. B. LOTT, *Collector of Taxes.*

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The questions involved in these suits are of more importance than difficulty. They concern the internal commerce among the States of the Union, and the tranquillity of those States. The facts are few, and not contested, and the questions arising have heretofore engaged the attention of the Court. The Supreme Court of Alabama decided that a citizen of New York or Ohio cannot send to Mobile, Alabama, his merchandise or manufacture to be sold for his account, by his agent, at auction or private sale, in the state and condition in which he prepares it for that market, without incurring a charge for taxes by State and municipal authority at Mobile.

2d. A citizen of Alabama cannot purchase of a citizen of Ohio a product of the latter, for sale in Mobile, without incurring a similar charge, although the property is held or disposed of in the same state and condition in which it came from Ohio.

The first of these questions came before the Supreme Court of Louisiana in the case of The State of Louisiana *vs.* Kennedy & Co.—19 Ann. La. R., 397.

The gravity of the case was manifested in that suit. Kennedy & Co. were consignees and agents for citizens of a number of the States on the Mississippi River and its tributaries, who sold for them their agricultural and manufactured products, for their account, and remitted to them the proceeds. The State claimed a per centage upon the gross sales. The commerce of New Orleans is mainly composed of transactions of this kind. Upon its Levee the raw products from nearly one-half of the States of the Union may at some times be seen. The question was, whether upon the sales of these a tax can be collected for the State. The Supreme Court of Louisiana decided to the contrary of the judgment in Alabama, after a reference to the decisions in these suits.

The prohibition in the Constitution of the United States is: "No State shall, without consent of Congress, levy "duties on imports or exports, except what may be abso- "lutely necessary for executing inspection laws."

No consent has been given by Congress, and the execution of no inspection laws is involved; therefore, in its application to these cases, the prohibition is absolute: "No "State shall levy duties on imports or exports." The question then comes, does this prohibition apply to commerce among the States?

The Supreme Court of Alabama determined that if these commodities had been imported from Great Britain or Mexico, the tax could not be collected; but that this prohibition did not apply to inter-State commerce. But the

Court of Alabama had to encounter the opinion of the Supreme Court in Brown *vs.* The State of Maryland—12 W., 410—in which the Court say: "*It may be proper to "add, that we suppose the principles laid down in this case "apply equally to importations from a sister State.*" The Supreme Court of Alabama regarded this opinion as not provoked by any fact in the case. But in the case of Almy *vs.* California—24 How., 169—that opinion was adopted by the unanimous judgment of the Court. The question involved in the latter case was the legality of a tax on exports from California to New York. The bill of lading was for the carriage of merchandise from San Francisco to New York. The Court determined that the State could not exact a tax by requiring a stamp on the bill of lading.

The Court are careful in that case to maintain the authority of the case of Brown *vs.* Maryland. That case had been the subject of censorious, not to say acrimonious, criticism in Padelford *vs.* Foy—14 Georgia R. Its authority was contested, and it had been treated as overruled. The Court could not reply to the criticism, but maintained in all its latitude a decision that bears the impress of profound, earnest and impartial thought. If the prohibition applies to export duties in inter-State commerce, it must necessarily affect imports. They are correlatives. The export from one is an import into the other State, and the prohibition extends to both forms of taxation.

The declaration in the case of Brown *vs.* Maryland may, then, be assumed as the judgment of the Supreme Court, and that the principles of that case are guides in these. We might rest the argument of the plaintiffs in error here. It is no part of our duty to vindicate these opinions. They do not require it. The most thorough discussion has only resulted in establishing their merit. When the case of Brown *vs.* Maryland was decided, the debates of the Convention of 1787, as prepared by Mr. Madison, had not been published. The antecedent history in connection with this

clause, and the precise history of its introduction into the Constitution, will show that inter-State commerce was as fully in the purview of the Convention as was the commerce with foreign nations.

In the draught of the Constitution as reported, the following clauses appear:

"ARTICLE XII. No State shall coin money; nor grant "letters of marque; nor enter into any treaty, alliance or "confederation; nor grant any title of nobility.

"ARTICLE XIII. No State, without the consent of the "legislature of the United States, shall emit bills of credit; "or make anything but specie a tender in payment of "debts; nor levy imposts or duties on imports; nor keep "ships of war in time of peace; nor enter into any compact "or agreement with another State or a foreign power."

Mr. Madison moved to transfer from the thirteenth article the clause, "Nor levy imposts or duties on imports," so that the prohibition might be absolute. His motion was negatived; but the debate showed that internal commerce and the relations of the States were under consideration.

The clause was then amended so as to include exports. Then, that all duties collected should be paid into the treasury of the United States. The increasing rigor was defended upon the necessity to secure commerce from the competitions of the various States, and from the propensity to levy taxes upon strangers, rather than upon their own population.—3 Mad. Deb., 1445, 1446, 1447.

The license cases have been misunderstood, and this has occasioned much of the confusion that appears in the discussions on these suits. Those cases are not like these. The acts under discussion are revenue laws. There are no considerations of health or morals applicable. There is no invocation of any police powers. The question is, whether any kind of property situated like this is a subject of State taxation.

The Supreme Court, in Gilmer *vs.* Philadelphia—2 Wall., 730—assign to these cases their appropriate place in these discussions. They settle that a State, in the exercise of a police power, may forbid spirituous liquors imported from abroad, or from another State, to be sold by retail, or to be sold, without a license. There were expressions in some of the opinions that have another aspect, but this is all that was decided. In those cases there was no question of revenue, and no disposition to regulate commerce, except as ancillary to the more immediate purpose of suppressing intemperance.

But here all is concentrated in the question of revenue. The claim of the State is, that whatever comes within its jurisdiction for sale, and is sold, is liable for taxes, unless it comes from a foreign State.

The State allows nothing under the Coustitution of the United States to a citizen of another State, and no rights to the commodities of another State as imports. The decision by the Supreme Court in Brown *vs.* Maryland, is limited, and the decision in the case of Almy *vs.* California rejected as uncertain, and as having passed without consideration of the precise fact.

The last assumption was somewhat perilous. The case was employed to give the full and cordial recognition of the entire Court to the case of Brown *vs.* Maryland, *verbum post verbum.*

The question, then, is: Whether the Constitution protects commerce among the States from such taxes.

Mr. Justice Greer, in his opinion in the passenger cases—7 How., 464—employs this language: "Congress has "regulated commerce and intercourse with foreign nations, "and among the several States, by willing it to be free; "and it is not, therefore, left to the discretion of each State "of the Union either to refuse a right of passage to persons "or property through her territory, or to exact a duty for "permission to exercise it." That with this permission to

enter, the foreigner, whether of an independent nation or of one of the States, may lawfully sell his property, free from any charge or duty, would seem to be a necessary corollary. The prohibition in the Constitution is not that transit duties shall not be exacted, but that duties on imports or exports shall not be collected. While Spain occupied Louisiana, she granted the privilege of a deposite at New Orleans for those who employed the navigable waters of the Mississippi with the purpose of reaching a foreign market.

No charge as duty was imposed upon this commerce, whether of exports or imports. The debates in Congress, in 1802, upon the free navigation of the Mississippi, and the diplomatic correspondence which resulted in its acquisition, show that this right of deposite did not satisfy the popular demand.

But, if the Constitution permits the claim set up in this cause, it may be questionable whether the citizens in the interior have a right to an unmolested deposite in New Orleans. They certainly have not acquired more than such a right. If a tax upon a sale of merchandise, or products of the farm, be the subject of taxation, a mere transit is all that is protected by the Constitution.

The Supreme Court of New York, in a late case reported as case on taxes on brokers' sales, (Judge Barnard) says:

"This law imposes a tax upon the sale of an imported "article. It is not a tax upon occupation: it is not a tax "upon the general property of the State. It is a tax upon "imports; and a tax upon the sale is a tax upon the article "itself, and this the State has not the right to do. The "Constitution, which gives this power to Congress, pro- "vides that all duties shall be uniform through the United "States.

"If each State may tax every sale of imported articles "made within its borders, where would be the uniformity "of duties on imports, provided for in the Federal Consti-

"tution. It was to prevent this taxation on imported "articles by the States, for their own benefit, and thus "injuring the inhabitants of other States, which did not "import, that the whole power was given to the General "Government. I think, threfore, the act in question is "repugnant to the Constitution of the United States, and "is void."

The mischiefs from inter-State taxation would be far more mischievous.

The products of the States are carried from the remote interior to the Atlantic for distribution, or for exportation. If they can be taxed in each jurisdiction through which they pass, their whole value might be engrossed. But what power has one State more than another over commodities in that condition? Mr. Gouverneur Morris, in the Convention of 1787, states the very case as a reason for imposing the restriction: "He thought the regulation "necessary to prevent the Atlantic States from endeavoring "to tax the Western States."—6 Jones Missouri R., 464, 344; 18 California R., 265, 404.

The Supreme Court, in other cases than those cited, have gone far to support the conclusion we have quoted from the opinion of Mr. Justice Greer.

The Court has determined that a tax cannot be levied on ships employed in the commerce of California, when the home port is elsewhere—17 Howard, 597; and that a special tax on railroads for through passengers could not be exacted.—Crandell *vs.* Nevada, 6 Wall., 35.

That the internal commerce of this Union is free is the result of these decisions. No tax nor duty can be levied upon the right of a foreigner, whether belonging to another country or another State, to sell those commodities that he has lawfully introduced. This right is implied in the term, freedom of commerce and intercourse.

In the case of Brown *vs.* Maryland, the Court drew the line beyond which the power of taxation should not extend.

Brown was a citizen of the State. The tax imposed was a license tax, not affecting the thing itself. It was a personal tax apparently, upon an occupation. The Court held it was a tax on the import. The cases before the Court are taxes upon the value of the article, as ascertained by a sale in the very condition in which it came to the market. It is a tax upon the importer of the article; and, in one class of the sales, a tax upon the owners resident in other States, and designed to reduce the amount of the remittances to be made to them. The Supreme Court of Alabama do not deny that the case of Brown *vs.* Maryland is conclusive of the question, provided it be determined that commerce among the States is affected by these clauses of the Constitution.

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